

MUTUAL TERMINATION OF CONTRACT IN CONSTRUCTION PROJECTS

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*To my beloved Wife, Sons and Mother,
Sister and Brother,
and Family.*

Thank you for your support, guidance and everything.

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ABSTRACT

In the present climate where the construction industry is facing an unprecedented rise in the cost of construction materials, the issue of termination is sometimes foremost on the minds of the contracting parties, especially contractors who have not properly estimated the costs during a project lifecycle. Introduction of the mutual termination clause is intended for use by the parties to an existing contract who may wish to terminate the contract and release each other from the contract. Under this form, the original contract is terminated and the parties enter into a mutual release of the contract as well as of any claims that may be pending by one party against the other. Under the Contract Act 1950, the contract may be discharged by mutual consent of contracting parties according to clause 63 and 64 of the Act. A contract may be discharged by an agreement that it shall no longer bind either party. As it is their agreement which binds the parties, so by their agreement they may be loosed from the contractual tie. Mutual termination agreement unequivocally stated that the parties agreed to a mutual termination subject to the terms and conditions set out therein. The effect of this is that the principle contract is thereby rescinded and the parties thereon are bound by the terms and conditions of the mutual termination agreement. Henceforth, if any claim should arise between the parties it is governed by the mutual termination agreement and not by the principle contract which had expressly been rescinded by mutual consent. A termination by mutual consent is an agreement between employer and the contractor to cease work under the contract. Even though in the mutual termination agreement it is clearly stated that the contractor is not entitled or shall not make any claim or demand for any payment, loss, damages, compensation or whatsoever against the client, however in certain circumstances, the disputes still arise and need to be brought to the court for final judgement.

ABSTRAK

Dalam situasi masa kini, dimana industri pembinaan mengalami kenaikan terhadap harga bahan binaan utama, isu penamatan menjadi keutamaan di dalam pemikiran pihak-pihak yang berkontrak terutamanya kepada kontraktor yang telah tidak membuat anggaran kos yang terperinci dan tepat semasa pelaksanaan projek. Pengenalan kepada fasal penamatan secara bersama adalah bertujuan untuk kegunaan oleh pihak-pihak berkontrak yang berhasrat untuk menamatkan dan melepaskan mereka daripada ikatan kontrak. Dibawah fasal ini, kontrak induk akan ditamatkan dan pihak yang berkontrak tersebut perlu secara bersama melepaskan mereka disamping itu segala tuntutan yang mungkin timbul ditangguhkan oleh pihak yang berkenaan. Di bawah Akta Kontrak 1950, suatu kontrak boleh ditamatkan secara persetujuan bersama oleh pihak yang berkontrak selaras dengan fasal 63 dan 64 Akta tersebut. Kontrak boleh ditamatkan secara perjanjian dan ianya tidak lagi mengikat diantara satu pihak dengan pihak yang lain. Sebagaimana dengan perjanjian yang telah mengikat pihak berkenaan, maka dengan perjanjian juga mereka boleh melepaskan daripada ikatan kontrak. Perjanjian penamatan bersama dengan jelas menyatakan bahawa pihak-pihak adalah bersetuju kepada perjanjian penamatan bersama tertakluk kepada terma dan syarat-syarat yang dinyatakan di dalamnya. Kesan daripada itu, ialah kontrak induk akan terbatal dan pihak-pihak adalah terikat dengan terma dan syarat-syarat yang dinyatakan di dalam perjanjian penamatan bersama tersebut. Maka, jika terdapat sebarang tuntutan diantara pihak berkenaan ianya hendaklah selaras dengan perjanjian penamatan bersama dan bukannya di bawah kontrak induk yang mana ianya telahpun dibatalkan secara bersama. Penamatan secara persetujuan bersama ialah perjanjian diantara majikan dan kontraktor untuk memberhentikan kerja di bawah kontrak. Walaupun, di dalam perjanjian penamatan secara bersama dinyatakan dengan jelas bahawa kontraktor tidak layak atau tidak boleh mengemukakan sebarang tuntutan atau permohonan bagi bayaran, kehilangan, kerosakan, pampasan atau yang seumpama denganya terhadap majikan, bagaimanapun dalam keadaan tertentu pertelingkahan masih lagi timbul dan ianya perlu dibawa kepada mahkamah untuk mendapatkan pengadilan.